



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 1, 1996

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-0647

Dear Ms. Nguyen:

The City of Houston (the "city") has asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. That request was assigned ID# 28515.

The city received the following request for information:

Please be advised that the undersigned represents Mr. Arthur Huckaby with regard to claims against the City of Houston, County of Harris, and other entities.

Pursuant to the Texas Open Records Act, I am hereby requesting any and all documents concerning the above-referenced claimant, including but not limited to the ambulance run record, the arrest report, medical records, and log of prisoner information. I have enclosed a medical authorization which permits release of Mr. Huckaby's records to me.

You contend that the requested information is excepted from disclosure under section 552.103(a) of the Government Code. You have submitted the records at issue, labeled Exhibits 3 through 6, to this office for review.

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.

App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In determining whether litigation is reasonably anticipated, this office must make a case-by-case determination based on the information provided to this office. Open Records Decision No. 452 (1986) at 4. A governmental body must provide concrete evidence that litigation is realistically contemplated. Open Records Decision No. 518 (1989) at 5. We conclude that you have not established that litigation is reasonably anticipated in this matter. Although you have provided to this office a notice of claim filed with the city, we note that the incident giving rise to the notice occurred more than two years ago. You have provided no information to this office that would indicate that a lawsuit has been filed in this matter. In making the determination that litigation cannot be reasonably anticipated, we assume that the general two year statute of limitation applies and has not been tolled. See Civ. Prac. & Rem. Code §§ 16.001 (legal disability tolls running of limitations period), .003 (two year limitations period for personal injuries). If this is an incorrect assumption, please contact this office immediately.

Although section 552.103(a) is inapplicable, some of the information at issue is confidential by law. Exhibit 3 consists of the ambulance run records. Access to the patient information in the ambulance run records is governed by the Emergency Medical Services Act (the "EMS Act"), section 773.091 of the Health and Safety Code. See Open Records Decision No. 598 (1991).<sup>1</sup> Subsections (a) and (b) of section 773.091 provide:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical

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<sup>1</sup>Although Open Records Decision No. 598 (1991) addressed a release of records under the Medical Practice Act, it also discussed section 773.091 of the Health and Safety Code:

Section 773.091 thus provides for the same confidentiality, exceptions to confidentiality, and requirements for release of the information at issue as does section 5.08 of the Medical Practice Act, without conflicting with the provisions of that act. Although release of the information to one qualified to have it is not explicitly mandated by section 773.091 *et seq.*, we believe that reading the statute in harmony with the Medical Practice Act requires such a result as to these records. Our analysis under the Medical Practice Act is therefore equally applicable to a consideration of the issue under the Health and Safety Code provisions.

services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Section 773.092(a)(2) provides that these types of records must be released "when the patient or someone authorized to act on behalf of the patient submits a written consent to release any of the confidential information as provided by Section 773.093." Section 773.093(a) provides that a valid written consent signed by the patient must specify "(1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released." The requestor indicated that a consent form signed by the patient was sent to the city. You did not submit a copy of that consent form to this office. However, the ambulance run records must be released if the consent form complies with the EMS Act requirements.

Exhibit 5 contains medical information about Mr. Huckaby, including a medical assessment, treatment plan, and medical history, signed by an attending physician. Access to these records is governed by provisions of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S. See Open Records Decision No. 598 (1991). Section 5.08(b) of the Medical Practice Act reads as follows:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

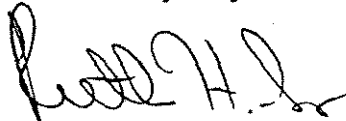
Section 5.08(h)(5) provides for the release of medical records to "any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section." Section 5.08(j)(1) provides that a written consent signed by the patient must specify "(A) the information or medical records to be covered by the release; (B) the reasons or purposes for the release; and (C) the person to whom the information is to be released." Section 5.08(k) provides for the mandatory release of medical records or a summary or narrative of the records upon a valid written consent "except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient." You do not indicate that the physician has made such a determination. However, if the MPA requirements have been complied with, the medical records at issue must be released.

The records at issue other than the records subject to the MPA and the EMS Act must be released. We note that some of the information you contended was excepted under section 552.103(a) is public and should have been released already. The information submitted to this office included first page offense report information. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e per curiam, 536 S.W. 2d 559

(Tex. 1976), the court determined that information generally found on the first page of an offense report must be released regardless of where it is found. *See* Open Records Decision No. 127 (1976). In Open Records Decision No. 597 (1991), this office determined that section 552.103(a) will not generally except from disclosure front page offense report information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 28515

Enclosures: Marked documents

cc: Ms. Jenifer L. Cobb  
Attorney at Law  
808 Lovett  
Houston, Texas 77006  
(w/o enclosures)